National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

DATE: December 18,1995

TO: Gerald Kobell, Regional Director, Region 6

FROM: Barry J. Kearney, Associate General Counsel, Division of Advice

SUBJECT: The Medical Center of Beaver, Pa. Inc., Case 6-CA-27543

506-6080-8700, 512-5012-6737, 512-7550-0143

This Section 8(a)(1) case was submitted for advice on whether the Employer's rules against divulging any "confidential or non-public information" were unlawful as overly broad.

The Employer is a hospital which anticipated undergoing its triennial accreditation review. In July 1995, the Employer modified the Confidentiality Agreement required to be signed by all employees. The prior Agreement concerned only patient information. The Employer asserts that it revised the prior Agreement because new accreditation guidelines required hospitals to maintain security and confidentiality of data and information.[(1)]

The new Confidentiality Agreement iterated the confidential nature of patient information and added the following new rules:

3. that I will not divulge any confidential or non-public information concerning the employees, operations, or strategic plans of The Medical Center, which I may acquire through my employment, to anyone not authorized to receive such information.

4. That I will not divulge or misuse any such information at any time during the term of my employment or after such employment ends.

The instant charge was filed by the Union which was renewing its organizing campaign around the time of the Employer's accreditation review and issuance of the new Agreement. The Employer alleges that the new Agreement rules do not restrict Section 7 activity which is permitted under the Employer's separate rules regarding solicitation and distribution. Those rules, however, appear to be standard solicitation/distribution rules which do not even concern the divulging of "confidential or non-public" information.

We conclude, in agreement with the Region, that the Rule 3 is unlawfully overly broad tending to interfere with the exercise of Section 7 activity. We also conclude that Rule 4 is unlawfully overbroad for essentially the same reason.

The Board has found employer rules overly broad as unlawfully interfering with Section 7 activity where the rules barred disclosure of employee names, addresses and wage rates;[(2)] barred discussion of "hospital affairs, patient information and employee problems...";[(3)] barred "improper or unseemly conduct on or off the company premises...which affects the employees' relationship to his/her job...fellow employees...supervisors...or affecting the company's product reputation or goodwill."[(4)] In these cases, the Board found that the rules went beyond a lawful ban, e.g., on the disclosure of clearly confidential employer information, and unlawfully trenched upon Section 7 activity. The instant case concerns rules barring the disclosure of both confidential and "non-public" information.

In American Electric Power, Inc.,[(5)] we found unlawful a rule prohibiting employees from using company information which was not generally available to the public. We concluded that such rule was overly broad because it reasonably could be read by employees to include information not protected by a claim of employer confidentiality, e.g., the employee's own salary.[(6)]

We conclude that the instant Rules 3 and 4, concerning "non-public information concerning the employees, operations, or strategic plans of The Medical Center" are unlawfully overly broad for the same reason. These rules can be reasonably read by employees to bar the Section 7 disclosure of terms and conditions of employment.(7)

Accordingly, the Region should issue complaint, absent settlement, attacking these rules as overly broad and unlawful on their face.

B.J.K.

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[1] It seems clear, however, that the accreditation regulations cited by the Employer were only guidelines, as opposed to mandates, and also did not specify the new rules promulgated herein.

[2] Certified Grocers of Illinois, Inc., 276 NLRB 133 (1985).

[3] Pontiac Osteopathic Hospital, 284 NLRB 442 (1987). See also Aroostook County Regional Ophthalmology Center, 317 NLRB 218 (1995)(unlawful rule against discussion of employee grievances where discussion occurred outside the earshot of patients).

[4] Cincinnati Suburban Press, 289 NLRB 966 (1988).

[5] Case 9-CA-15654, Advice Memorandum dated February 10, 1988.

[6] Cf., International Business Machines Corp. (IBM), 265 NLRB 638 (1982)(employer demonstrated sufficient business justification to support ban on employee distribution of employer-compiled confidential employee wage information).

[7] The Employer's citation of Ridgely Manufacturing Co., 207 NLRB 193 (1973) in support of its position is misplaced. In Ridgely, the Board adopted an ALJ finding that an employee had been engaged in protected activity when he copied the names of fellow employees from time cards openly displayed in the workplace. The ALJ found that this information did not "fall into the category of private or confidential records of the Employer [but instead] constituted information available to all employees in the course of their normal work relationship." The instant rules are unlawfully over broad precisely because employees could reasonably interpret the bar against the distribution of "non-public information...to anyone not authorized to receive such information" to include the distribution to Union organizers of information similar to the workplace-displayed employee names in Ridgely. The Employer also distinguishes Waco, Inc., 273 NLRB 746 (1984), contending that it has not limited employee discussion. However, this contention is inapposite to the violation found here, viz., the rules' overly broad ban on information disclosure.